



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2004

Ms. Donna R. Bennett
District Attorney
173rd Judicial District, Henderson County
109 West Corsicana Street, Suite 103
Athens, Texas 75751

OR2004-0733

Dear Ms. Bennett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195448.

The Henderson County District Attorney's Office (the "district attorney") received a request for information regarding the number of cases during the period of 1997 to 2002 (1) submitted to your office, (2) rejected by your office, (3) accepted by your office, (4) "no billed" by the grand jury, (5) "true billed" by the grand jury, (6) resulting in conviction by plea bargain, (7) resulting in conviction by jury or bench trial, (8) considered under article 12.45 of the Code of Criminal Procedure, (9) resulting in community supervision, (10) resulting in prison time for the offender, and (11) resulting in acquittal. The requestor also seeks any agreements for the distribution of property made by any state agency under article 59.06 of the Code of Criminal Procedure. You state that the district attorney has released information responsive to items 1, 3, 4, 5, and 7 and to the request for agreements for the distribution of property. However, you claim that the remaining requested information is not subject to chapter 552 of the Government Code. We have considered your arguments and reviewed the submitted information.

You state, and provide documentation showing, that you have released the information in the district attorney's possession that is requested by items 1, 4, and 5. However, you have also submitted to this office information that relates to these items. We find that although the submitted information relates to the requested information, it is not responsive to the present request. Therefore, our ruling does not address the submitted information.

You assert that several items of the present request contain inquiries that would require the district attorney to create documents or conduct research. In responding to a request for information under chapter 552 of the Government Code, a governmental body is not required to answer factual questions, conduct legal research, or disclose information that did not exist at the time the request was received. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, a governmental body is not required to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that receives the request. See Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. See Open Records Decision No. 561 at 8-9 (1990). We therefore assume that the district attorney has made a good-faith effort to locate any information that would be responsive to the requestor's inquiries. If found, any such information must be released to the requestor. See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 195448

Enc. Submitted documents

c: Mr. Barry E. Bilger
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(w/o enclosures)